



INTERIOR BOARD OF INDIAN APPEALS

Sherry Camel v. Assistant Portland Area Director, Bureau of Indian Affairs

21 IBIA 179 (02/10/1992)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

SHERRY CAMEL

v.

ASSISTANT PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-116-A

Decided February 10, 1992

Appeal from a decision concerning a tribal court divorce decree.

Affirmed.

1. Bureau of Indian Affairs: Generally--Indians: Law and Order: Civil Jurisdiction

The Bureau of Indian Affairs does not have the authority or responsibility to enforce a tribal court order. That authority and responsibility resides with the tribal court.

APPEARANCES: Sherry Camel, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Sherry Camel seeks review of a June 18, 1991, letter from the Portland Assistant Area Director (Program Services), Bureau of Indian Affairs (Area Director; BIA). The Area Director's letter concerns BIA's responsibility with regard to a tribal court divorce decree. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that letter.

Background

Appellant and Marvin Camel, her ex-husband, are both members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (Tribe). They were married in Missoula, Montana, on February 23, 1973, and were divorced on October 29, 1990, through a Final Decree of Dissolution of Marriage issued by the tribal court. In that decree, the court awarded to appellant, inter alia, a 35-acre tract of land that had been acquired by appellant and Marvin during their marriage, and which was held by the United States in trust for appellant and Marvin as joint tenants with right of survivorship. Marvin has failed to apply to BIA to convey his interest in the property to appellant in accordance with the court's decree. 1/

1/ The record indicates that this tract of land was acquired from Alice Camel. Alice retained a 5-acre parcel adjacent to the 35-acre parcel

Appellant apparently asked BIA to change its title records to show her as the sole owner of the tract. BIA sought advice from the Portland Regional Solicitor's Office concerning its responsibilities in this situation. The Solicitor's Office responded by memorandum dated June 7, 1991, stating at pages 1-2:

Neither the BIA nor the United States was a party to the divorce proceedings nor did the tribal court order the United States or the BIA to take any action. Therefore, based on the information known to our office, BIA is under no obligation to take any action at this time. Indeed, it is questionable whether the tribal court could even lawfully order the BIA to take any action. See United States v. Yakima Tribal Court, 794 F. 2d 1402 (9th Cir. 1986). If, and when, Marvin Camel complies with the tribal court order to execute documents necessary to transfer the property, BIA will become involved in the process.

Your regulations, 25 C.F.R. §§ 152.17-152.32, authorize and control the conveyance of this property. * * *

Basing his response on the advice received from the Solicitor's Office, on June 18, 1991, the Area Director wrote appellant, stating:

This is in response to your letter received June 12, 1991, regarding the tribal divorce decree between yourself and Marvin Camel. Your letter was received after the Pacific Northwest Regional Solicitor's Office responded to our May 28, 1991, request for an opinion about the Bureau of Indian Affairs' responsibilities with respect to a Tribal divorce decree. We forwarded this opinion to the Flathead Agency several days ago.

To summarize the Solicitor's memorandum, the Tribal Court decree did not order the BIA to take any action. If and when your ex-husband submits a request to convey his interest in the property to you, the BIA will consider that request in accordance with the regulations. The BIA has no ability to enforce this tribal court decree.

By letter dated June 27, 1991, appellant notified the Area Director that she wished to appeal this letter. Appellant stated that the decision "involves a question of my civil rights and my right to adequate service from the B.I.A. under their trust responsibilities." Appellant indicated that her appeal was being taken under "USCA 176.60, Subpart G,

fn. 1 (continued)

sold to appellant and Marvin. Apparently, Alice's sewer drainage field is located on the 35-acre parcel, but no easement for her continued use of this drainage field was specifically retained when the 35-acre parcel was conveyed to appellant and Marvin. No issues relating to Alice's use of the 35-acre parcel are raised in the present appeal.

'Appeals'." 2/ The Area Director transmitted the notice of appeal to the Board by letter dated July 17, 1991. Although informed of her right to do so, appellant did not file a brief.

Discussion and Conclusions

The issue raised in this appeal is BIA's right and/or responsibility to enforce a tribal court order. Appellant contends, in essence, that BIA has a trust responsibility to her to change its title records in response to the tribal court divorce decree. BIA has taken the position that it has no authority to alter its title records because of the tribal court's order, and without a request from Marvin Camel. It appears that appellant's position is based upon a belief that pursuing tribal court remedies would not be fruitful, because the tribal court would not be able to obtain personal jurisdiction over Marvin, who resides off the reservation.

The record contains a June 25, 1991, memorandum from a tribal attorney to the Flathead Agency Superintendent. The memorandum states at page 1:

We have the Solicitor's Opinion on enforcement of the Sherry/Marvin Camel divorce decree and agree that Sherry Camel must take action through Tribal Court first to compel Marvin to fill out appropriate paperwork for transfer of title in compliance with the Decree. Then, of course, the BIA will record that transaction pursuant to Conroy v. Conroy, 575 F.2d 175 ([8th Cir.] 1978). [3/] If it becomes impossible to bring Marvin Camel before the Court, Sherry may have to bring a Quiet Title Action in federal court whereby the BIA would be a necessary party and the Tribal Court Decree would be prima facie evidence.

[1] Appellant is attempting to enforce a tribal court decree through BIA. BIA does not have the authority or the responsibility to enforce a tribal court decree. That authority and responsibility, which is part of tribal sovereignty, resides with the tribal court. To the extent appellant is appealing from a decision of the Area Director not to alter its land title records to show her as the sole owner of the 35-acre tract at issue, the Area Director's decision must be affirmed. Appellant must seek relief first through the tribal court. If the tribal court is unable to obtain jurisdiction over Marvin, she must then pursue this matter through whatever additional judicial remedies are available to her.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 18, 1991,

2/ There is no such appeal provision as appellant cites. Her appeal should have been taken under 25 CFR Part 2 and 43 CFR Part 4, Subpart D. The appeal is treated as having been taken under these CFR provisions.

3/ In Conroy the court held that a tribal court had jurisdiction, as part of a divorce proceeding, to enter a decree dividing between the parties land held in trust by the United States.

decision of the Assistant Portland Area Director (Program Services) is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge